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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 CLARKE SHELDON LOWE,
12 Petitioner,
13 v.
14 JAMES E. TILTON, Secretary,
15 Respondent.

Civil No. 07-2232 LAB (CAB)

**ORDER GRANTING MOTION FOR AN
ENLARGEMENT OF TIME TO FILE
RESPONDENT'S MOTION TO
DISMISS OR ANSWER**

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17 Petitioner, a state prisoner, has filed a Petition for Writ of Habeas Corpus pursuant to 28
18 U.S.C. § 2254 [Doc. No. 1] and an Amended Petition for Writ of Habeas Corpus Pursuant to 28
19 U.S.C. §2254 by a Person in State Custody. [Doc. No. 2.] Respondent has filed a motion for an
20 enlargement of time to file respondent's motion to dismiss or answer. [Doc. No. 5.] Good cause
21 having been shown, Respondent's request for an enlargement of time is **GRANTED**.

22 **THE COURT FURTHER ORDERS THAT:**

23 1. If Respondent contends the Petition can be decided without the Court's reaching the
24 merits of Petitioner's claims (e.g., because Respondent contends Petitioner has failed to exhaust
25 any state remedies as to any ground for relief alleged in the Petition, or that the Petition is barred
26 by the statute of limitations, or that the Petition is subject to dismissal under Rule 9 of the Rules
27 Governing § 2254 Cases, or that all of the claims are procedurally defaulted, or that Petitioner
28 is not in custody), Respondent shall file a motion to dismiss pursuant to Rule 4 of the Rules

1 Governing § 2254 Cases no later than **February 21, 2008**. The motion to dismiss shall not
2 address the merits of Petitioner's claims, but rather shall address all grounds upon which
3 Respondent contends dismissal without reaching the merits of Petitioner's claims is warranted.¹
4 At the time the motion to dismiss is filed, Respondent shall lodge with the Court all records
5 bearing on Respondent's contention in this regard. A hearing date is not required for the motion
6 to dismiss.

7 2. If Respondent files a motion to dismiss, Petitioner shall file his opposition, if any, to
8 the motion no later than **March 24, 2008**. At the time the opposition is filed, Petitioner shall
9 lodge with the Court any records not lodged by Respondent which Petitioner believes may be
10 relevant to the Court's determination of the motion.

11 3. Unless the Court orders otherwise, Respondent shall not file a reply to Petitioner's
12 opposition to a motion to dismiss. If the motion is denied, the Court will afford Respondent
13 adequate time to respond to Petitioner's claims on the merits.

14 4. If Respondent does not contend that the Petition can be decided without the Court
15 reaching the merits of Petitioner's claims, Respondent shall file and serve an answer to the
16 Petition, and a memorandum of points and authorities in support of such answer, pursuant to
17 Rule 5 of the Rules Governing § 2254 Cases no later than **March 6, 2008**. At the time the
18 answer is filed, Respondent shall lodge with the Court all records bearing on the merits of
19 Petitioner's claims. The lodgments shall be accompanied by a notice of lodgment which shall
20 be captioned "**Notice of Lodgment in 28 U.S.C. § 2254 Habeas Corpus Case — To Be Sent**
21 **to Clerk's Office**." Respondent shall not combine separate pleadings, orders or other items into
22 a combined lodgment entry. Each item shall be numbered separately and sequentially.

23 5. Petitioner may file a traverse to matters raised in the answer no later than **April 7,**
24 **2008**. Any traverse by Petitioner (a) shall state whether Petitioner admits or denies each
25 allegation of fact contained in the answer; (b) shall be limited to facts or arguments responsive
26 to matters raised in the answer; and (c) shall not raise new grounds for relief that were not
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28 ¹ If Respondent contends Petitioner has failed to exhaust any state remedies as to any ground for relief alleged in the Petition, the motion to dismiss shall also specify the state remedies still available to Petitioner.

1 asserted in the Petition. Grounds for relief withheld until the traverse will not be considered.
2 No traverse shall exceed ten (10) pages in length absent advance leave of Court for good cause
3 shown.

4 All other rulings set forth in this Court's order of December 4, 2007 [Doc. No. 3] shall
5 remain in effect.

6 **IT IS SO ORDERED.**

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8 DATED: January 18, 2008

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11 **CATHY ANN BENCIVENGO**
12 United States Magistrate Judge
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